

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1654 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HEIRS OF VAIDYA PANNALAL J

Versus

JAYANTILAL CHIMANLAL SHAH

Appearance:

MR SK BUKHARI for Petitioners
MR PB MAJMUDAR for Respondent No. 1
Respondent No. 2 deleted.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 15/04/97

ORAL JUDGEMENT

1. The petitioners herein are the original defendants and the respondent herein is the original plaintiff. They are referred to herein respectively as 'the defendants and the plaintiff'.

The defendants face decree for eviction on the ground of personal requirement under sec. 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, (for short 'the Rent Act') and also under sec.

13(1)(1) of the Rent Act.

2. The plaintiff originally filed Old R.C.S. No. 179/1970, ultimately given Rent Suit No. 203/1975 in the Court of the Small Causes Judge, Baroda for recovering possession of the suit premises being the house situated at Dala Patel's Pole Naka, Narsinhjini Pole, Baroda. One Vaidya Pannalal Jamnadas, original defendant no.1, who died pending this revision application and who has been succeeded by his legal representatives petitioners nos. 1/1 to 1/3, was the original owner of the suit premises consisting of three storeys, had entered into a conditional sale-deed for a period of 15 years for the consideration of Rs.17,999/-. After sale-deed was entered into a suit was filed against the defendants for not paying rent and that suit was decreed against the defendants. However, the defendants nos. 3 and 4 through defendant no. 5, filed Injunction Suit No. 1265 of 1956 for obtaining relief of injunction restraining the plaintiff from executing the decree passed in his favour. That suit was dismissed and the appeal against the dismissal was also dismissed and the injunction was vacated.

3. The defendant no. 1 continued in possession as the tenant of the suit premises. Thereafter, he executed a rent note of the suit premises on 25/8/1958 as the Karta of his family. The plaintiffs purchased a house by sale of house no. 72 and on 25/8/1958 the defendant no. 1 executed out-right sale for both the houses. The plaintiff's brother and mother relinquished their share and right over the suit premises by accepting Rs.1,000/each. The plaintiff and his brother at the time of the settlement were residing in Ghadiyali Pole house, which was taken on lease. However, they all separated thereafter and had their respective houses, only the business was kept joint. The plaintiff's brother Hiralal purchased another house in Dala Patel's Pole on 29/11/1957 and he had shifted to that house. The plaintiff then vacated the Ghadiyali Pole house and started residing with his brother Hiralal. The suit premises was let out to the defendants for residence and defendant no. 1 was allowed to use the same accordingly although he was allowed to use the ground floor for his dispensary. The plaintiff had married third time and he has three children. He had become the sole owner by deed dated 4/7/1970 in respect of the suit house. The partnership was dissolved in 1969. Dayabhai also shifted to his own house. As the plaintiff's brother Hiralal's son got married, there was a shortage of accommodation in Hiralal's house and it was not possible for the plaintiff

to continue to reside in that house. He, therefore, required the suit premises reasonably and bonafide for his occupation and also for starting his own business on the ground floor. It was also his case that the defendants changed the user of the suit premises in contravention of the terms of the lease. Besides, the defendants got constructed their own house at Tarsali and they having acquired suitable residence accordingly, the plaintiff became entitled to get possession of the suit premises on that ground also. Hence, the plaintiff served notice dated 3/9/1970 and as the defendants did not comply with the same, the plaintiff was required to file the suit for possession of the suit premises and recovery of mesne profits as stated above.

4. The defendants nos. 1 and 5 filed their written statement exh. 31 and after the plaint was amended they also filed written statement at exh. 69. The defendants nos. 3, 4 and 6 filed their written statement at exh. 38. While denying the allegations contained in the plaint they asserted that there was neither a joint family of the defendants nor having defendant no. 1 as the Karta of such family. According to them the deed executed by the defendants on 22/9/1952 witnessed mortgage transaction and the sale was a conditional sale and with this understanding the suit premises was kept in possession of the 1st defendant. While fixing the rent thereof at Rs.50/- per month, they have asserted that the suit is required to be dismissed on account of non-joinder of necessary parties. According to them, the defendants never committed the breach of the terms of the lease as from the beginning the suit premises was let out both for residence and for non-residential use. They have not started any business as alleged by the plaintiff. But defendant Harish used to keep some steel sets which he had given on hire and no damage would be caused to the property by keeping the same. They have asserted that they have not acquired suitable residence at Tarsali because the said premises are small premises in slum quarters and could not be said to be suitable. According to them, if the defendants were ordered to vacate the suit premises, they would suffer greater hardship.

5. Issues were framed at exh. 39 and at the conclusion of the trial the learned trial Judge came to the conclusion that the defendant no. 1 was the Karta of his joint family, that as such he executed the rent note for the suit house (suit premises) on 25/8/1958, that the suit does not suffer from vice of non-joinder of necessary parties to the suit, that he required the suit

premises reasonably and bonafide for his personal use and occupation, that he would suffer greater hardship if the decree for eviction was not passed, that the principal object of letting of the suit premises was residence, that the provisions of section 13(1)(1) of the Rent Act were applicable to the facts of the case, that the defendants had obtained vacant possession of the suitable accommodation after coming into operation of the Rent Act, that the plaintiff could not be said to become landlord after 1/1/1964 and that it could not be said that he was not entitled to the possession of the suit premises on the ground of personal requirement under sec. 13 (1)(g) of the Rent Act on that account, that the defendants did not deny the plaintiff's title and the plaintiff would not be entitled to decree for eviction on that ground, that the defendants did not change the user of the suit premises, that the plaintiff established that there was a partition of the properties on 4/7/1970 and plaintiff and his brother became separate, that the plaintiff proved that he became owner of the suit premises, that the suit notice was legal and proper and that the plaintiff was entitled to decree for possession on the aforesaid grounds established by the plaintiff. The learned trial Judge accordingly passed decree for possession in favour of the plaintiff directing the defendants to vacate the suit premises on or before 31/8/1979 and also directing them to pay mesne profit at the rate of Rs.50/- per month from the date of the suit and passing no order as to cost.

6. The defendants carried the matter in appeal before the learned Extra Assistant Judge, Vadodara in Regular Civil Appeal No. 141 of 1979. They challenged the decree for eviction passed on the ground of personal requirement, hardship and acquisition of suitable residence while also contending before the appellate court that the plaintiff alone did not have right to bring the suit, that in any event he became landlord after 1/1/1964 and was not entitled to claim possession of the suit premises on the ground of personal requirement under section 13 (1)(g) of the Rent Act. The learned appellate Judge negatived all the contentions of the petitioners-defendants and dismissed the appeal with no order as to cost. He simultaneously also dismissed the cross objections filed by the respondent-plaintiff. That is how the defendants have been before this Court by virtue of sec. 29(2) of the Rent Act as stated above.

7. I have heard the learned advocates appearing for the rival parties. I have gone through the evidence adduced before the trial Court. I have also gone through

the judgments rendered by the learned trial Judge and the learned appellate Judge. There are concurrent findings of facts upon appreciation of evidence with regard to plaintiff's case of personal requirement, plaintiff's hardship and acquisition of suitable residence by the defendants. No question of law arises in respect of the evidence that has been placed on the record of the case. The plaintiff has established his case about how he has been permitted to reside in his brother Hirabhai's house and the circumstances in which he was required to leave his brother Hirabhai's house. Family of Hirabhai as well as the plaintiff's family had grown by passage of time. Hirabhai's eldest son married and that is how it became necessary to request the plaintiff to vacate the portion of Hirabhai's house occupied by the plaintiff. Under such circumstances, the plaintiff was required to hire another premises during the pendency of the suit, else he would have been on street. Upon appreciation of the evidence, both the Courts below found that the plaintiff's requirement was genuine and he really felt a great hardship. It has also been established that the plaintiff and his brother were joint in business upto 1969 and the joint family shop having gone to his brother Hirabhai on dissolution of the partnership, plaintiff was required to settle himself in business. Under such circumstances the plaintiff also wanted some portion of the suit premises to be used for his occupation so that he can earn his livelihood and both the Courts below have found that even that requirement of the plaintiff by no means could be said to be unreasonable and not bonafide. On the question of hardship it has been observed by the learned appellate Judge that even the defendant had not said that the plaintiff has any other house of his own or that he had any other business already settled else-where. The plaintiff had married third time in the year 1962 and had, by the time appeal came to be decided three children. There was also expansion of family of his brother Hirabhai, whose eldest son got married some time during the pendency of the proceedings. This compelled the plaintiff to hire a rented house during the pendency of the suit. The defendants having their own accommodation were held to suffer no hardship, whereas the plaintiff was held to suffer greater hardship, if the decree for eviction was not passed.

8. It has been further held upon appreciation of evidence that the defendants nos. 1 and 2 were allotted premises bearing no. 946 and 910 respectively constructed under E.W.S. scheme at Tarsali. It has been traced from evidence that the said premises consisted of one room of the area of 10 ft. x 10 ft., a kitchen of

the area of 10 ft. x 7 ft. and the bath room and the latrine. There is also a Varanda admeasuring 4 ft. x 10 ft. open to sky and chowk of 10 ft. x 7 ft. also open to sky. Thus, the Courts below have concluded that the defendants had premises to accommodate their families. In so far as the suit house was concerned, the space at the command of the defendants consisted of 1st floor and 2nd floor each of which had a room and a kitchen. That is how comparing the accommodation in the suit premises with the accommodation in the acquired premises the Courts below came to the conclusion that the premises acquired by the defendants had been quite suitable for their residence. The Courts below have discussed the evidence with regard to the extent of family also.

9. As stated above, this is essentially a case of appreciation of evidence and findings of facts arrived at by the Courts below upon such appreciation. This Court will not re-assess the evidence and its value and interfere with the findings of facts merely because it might be shown here or there that the appreciation by either of the Courts below is incorrect or otherwise and that the Courts should have reached a different conclusion of facts from what the Courts below did. This is by now the settled position of law and the decree for possession passed by the trial Court and confirmed by the appellate Court would need no interference at the hands of this Court.

10. It has then been submitted on behalf of the defendants that the plaintiff having become the sole owner of the suit premises after 1/1/1964 would not be entitled to recover possession thereof u/S. 13(1)(g) of the Rent Act. However, such a point was first raised before the appellate Court, but then given up since even before 1/1/1964, on the defendants' own say, the plaintiff was one of the joint owners of the suit premises and he became the sole owner thereof after 1/1/1964 on partition/family arrangement amongst the brothers and in that view of the matter, the plaintiff's right to recover possession of the suit premises would not be lost in terms of the newly added explanation to sub-section (2) of section 13 of the Rent Act. Such provision is contained in the explanation to section 13(2). The said explanation would read as under :-

"For the purpose of clause (g) of sub-section
(1)-

(a) a person shall not be deemed to be a
landlord unless he has acquired his

interest in the premises at a date prior to the beginning of the tenancy or the first day of January 1964, whichever is later, or if the interest has devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy or the first day of January 1964, whichever is later,"

11. It can be seen from the plain reading of the aforesaid explanation that the landlord should have acquired his interest in the premises latest before first day of January 1964. In the present case the plaintiff had already his interest in the suit premises much prior to 1st January, 1964. Such interest became absolute upon partition. Hence, the matter stood rightly concluded before the appellate Court upon the defendants having rightly conceded to the non-applicability of explanation to section 13(2) of the Rent Act.

12. In above view of the matter, the defendants fail in this revision application. Rule is accordingly discharged with no order as to cost.

At this stage Mr. S.K. Bukhari, learned advocate for the petitioners seeks some time to enable the petitioners to take the matter higher up. He accordingly prayed for staying of the decree for eviction for a period of six weeks. His prayer is accordingly granted. The decree for eviction is hereby stayed upto 31/7/1997 upon petitioners filing usual undertaking before this Court within a period of four weeks from today.

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